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January 29, 2014

VIA E-MAIL [CEQA.Guidelines@ceres.ca.gov]

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Re: RCTC's Input In Response to "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update," Dated December 30, 2013

Dear Mr. Calfee:

The Riverside County Transportation Commission (RCTC) appreciates the opportunity to comment on the Office of Planning and Research's "Possible Topics to be Addressed in the 2014 CEQA Guidelines Update" (Guidelines Update), dated December 30, 2013.

As OPR may be aware, Riverside County is populated by 2.3 million people and covers geography roughly the size of the state of New Jersey. Riverside County is home to some of California's most important assets including several world-renowned public and private universities, state parks and national forests, agricultural industry, and international tourism. Riverside County continues to experience urbanization and population growth as California's economy recovers, requiring infrastructure modernization and thoughtful planning.

RCTC is the regional transportation planning agency for Riverside County, chartered by Public Utilities Code § 130050. In that role, RCTC serves as both lead agency and responsible agency as to many CEQA documents each year, often in coordination and consultation with the California Department of Transportation. RCTC also frequently partners with federal transportation agencies in order to implement joint state/federal transportation projects. Among others, RCTC served as lead or responsible agency as to the State Route 91 Corridor Improvement Project (a \$1.3 billion dollar investment that will relieve traffic conditions on one of the nation's most congested freeways), the Perris Valley Line project (which will extend Metrolink service to new areas via an existing rail line and take over 34 million vehicle miles traveled off the road annually), and other similar projects.

RCTC is pleased to see several of the proposed updates would clarify and provide guidance for several key issues in the review process under the California Environmental Quality Act. These include lead agency designation, the use of regulatory standards for environmental evaluation, procedures for posting notices of preparation, evaluation of responses to comment, and other issues during public review of an environmental impact report.

In addition to the above-listed proposed updates, RCTC reviewed the Guidelines Update and has the following comments:

Comments on the Guidelines Update

State CEQA Guidelines § 15063(g) [Initial Study] and 15083 [EIR]

OPR is proposing changes to CEQA which provide that a lead agency may share an administrative draft of an initial study or EIR with the applicant in order to ensure accuracy in the project description and mitigation measures. It is unclear whether this means only the Project description and mitigation measures can be shared, or if other sections can be shared as well. RCTC requests clarifying language be added to state this provision is not limited to these portions of an environmental document.

Similarly, RCTC requests any changes made to State CEQA Guidelines § 15063 clarify that sharing a preliminary draft document with an applicant for the limited purposes identified above does not abrogate the application of the preliminary draft or deliberative process exceptions that may apply to the production of such documents under the Public Records Act, or weaken the application of the joint defense doctrine to such documents.

State CEQA Guidelines § 15064(h)(1)

OPR proposes to add “loss of open space” as an example of potential cumulative impacts. This would be the only specific example found in that subsection. The emphasis on loss of open space as indicative of a potentially significant cumulative impact could impact the CEQA process for projects that involve even very limited new or expanded rights of way, especially in undeveloped areas. RCTC objects to the inclusion of “loss of open space” as the sole example of a potential cumulative impact and suggests either the deletion of that item as an example or, at the very least, the inclusion of other examples in this subsection. RCTC also requests any revisions providing examples of potential cumulative impacts make clear that the existence of such impacts is not *per se* a significant (or cumulatively considerable) impact.

State CEQA Guidelines § 15064.4

Depending on the final wording, the proposed clarification that “hypothetical baselines” are not appropriate for greenhouse gas analysis could be read to mean the use of a future baseline is impermissible (i.e., a future baseline does not exist right now, so it is arguably hypothetical). This could reignite the *Sunnyvale* baseline debate and seems to have implications for the California Supreme Court's 2013 decision in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439. There, the Court held that an agency may utilize a hypothetical, or future, conditions where appropriate (such as for projects that may not be operational for many years) as long as the selection of the baseline is supported by substantial evidence and certain other conditions were met. Particularly for transportation projects that may take decades to build, the proposed change to the CEQA Guidelines could prevent agencies from analyzing greenhouse gas impacts from future traffic on the new transportation system using the projected completion date as the baseline. Accordingly, RCTC urges OPR to carefully consider the final wording of any changes to assure that any proposed wording does not have unintended consequences with regard to determining the CEQA baseline.

State CEQA Guidelines § 15065

OPR proposes to add “roadway widening” as an example of projects that may achieve short-term environmental goals to the disadvantage of long-term goals. Again, RCTC objects to this edit, which focuses solely on transportation projects. Specifically, opponents to future transportation improvements could claim that such language requires transportation agencies to find that all roadway widening projects (even minor improvements that do not involve expanding freeway capacity) disadvantage long-term goals. To the extent that such modifications are made, however, RCTC requests any language make clear that roadway widening projects do not result in a *per se* failure to achieve long-term goals.

Suggested Additions to the Guidelines Update

Comments Submitted to Lead Agency

The last-minute submission of voluminous comments on CEQA projects (often mere minutes before project approval) continues to occur in a manner that causes undue delay in the approval of crucial public projects and the needless expenditure of tax payer funds, due to multiple continuances and re-noticing of public meetings. Particularly where entities have received notices throughout the CEQA process, the submission of voluminous comments at the last moment by those entities undermines the formal review and consultation process provided by CEQA to address comments before a project comes before a decision-making body.

The court in *Mt. Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 202, found that agencies could limit the time period in which appellants may submit documents in an administrative appeal process. RCTC requests OPR consider an amendment to the State CEQA Guidelines providing guidance regarding the interpretation of Public Resources Code § 21177 and the exhaustion of administrative remedies doctrine – perhaps through a revision recognizing the authority of local agencies to adopt reasonable rules regarding the submission of *written* evidence for consideration by a decision-making body under CEQA. This would also be in accord with the holding in *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 528, where, with respect to voluminous documents submitted on a DVD just before a hearing, the court stated that “an issue must be ‘fairly presented’ . . . Evidence must be presented in a manner that gives the agency the opportunity to respond with countervailing evidence” or the exhaustion doctrine is not satisfied.”

Streamlined CEQA Review for Regional Transportation Plans

OPR may be aware state and federal transportation planning laws require the preparation, and regular update, of Regional Transportation Plans (RTP) that prioritize transportation projects over the long-term (typically a 50-year planning horizon). Although the RTPs are prepared by the Metropolitan Planning Organizations/Councils of Governments throughout California, the transportation projects included in those plans are frequently implemented by local and regional agencies. Consistent with CEQA’s policy that “tiering” of environmental review be used wherever possible to reduce redundancy in environmental review, RCTC requests OPR consider a means to streamline CEQA review both for RTPs, which are otherwise subject to revision and CEQA review every few years and for the local and regional agencies that rely upon those RTPs when implementing projects identified in the RTP.

Exemption or Partial Exemption for Transportation Projects that Reduce Regional VMT

Lastly, RCTC requests OPR consider updating the State CEQA Guidelines to add a categorical exemption for transportation projects that would reduce vehicle miles traveled on a regional basis. Alternatively, a partial exemption that allows such projects to forego air quality/greenhouse gas analyses would be appropriate. The overwhelming majority of air quality and GHG emissions resulting from transportation projects occurs as a result of vehicular, rail, or other emissions. Transportation projects that *reduce* regional VMT and/or take cars off the road are especially important to heavily congested freeways throughout California. Additionally, encouraging projects that reduce regional VMT is critical for meeting the State's GHG reduction targets under AB 32, SB 375, and similar laws which recognize that the transportation sector is the largest producer of greenhouse gases in the state. Accordingly, adopting a categorical or partial exemption for projects that further the GHG reduction goals by taking cars off the road would be consistent with the State's overall policy. As even Governor Brown recently recognized,¹ the CEQA process can be a tool for opponents to block these exceedingly necessary and beneficial transportation projects, a fact which an exemption could help to rectify.

Thank you for the opportunity to provide comments on the Guidelines Update. RCTC looks forward to a continued dialogue with the Office of Planning and Research as the 2014 Update to the State CEQA Guidelines is prepared.

Sincerely,



Anne Mayer
Executive Director
Riverside County Transportation Commission

¹ See Petition for Extraordinary Writ of Mandate, Application for Temporary Stay by Governor Brown and other State officials, dated January 24, 2014, at p. 22 (“[J]ust by filing litigation and without having to prove a case, opponents can effectively block financing and shut down a project. If there are multiple issuances of bonds to fund the project in phases, serial litigation can subject government works to the equivalent of ‘death by a thousand cuts.’”).